

## § 30.210

developed a covered beryllium illness must be made by using the procedures outlined in paragraphs (b), (c), (d), or (e) of this section.

(b) Beryllium sensitivity or sensitization is established with an abnormal LPT performed on either blood or lung lavage cells.

(c) Chronic beryllium disease is established in the following manner:

(1) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (b) of this section), together with lung pathology consistent with chronic beryllium disease, including the following:

(i) A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) A computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) Pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(2) For diagnoses before January 1, 1993, the presence of the following:

(i) Occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) Any three of the following criteria:

(A) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(B) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(C) Lung pathology consistent with chronic beryllium disease.

(D) Clinical course consistent with chronic respiratory disorder.

(E) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(d) An injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium

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sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease is sufficient in itself to prove a causal relationship.

(e) The Secretary of Health and Human Services may, from time to time, and in consultation with the DOE, specify additional means of establishing the existence of a covered beryllium illness.

### ELIGIBILITY CRITERIA FOR CLAIMS RELATING TO CANCER

#### § 30.210 What are the criteria for eligibility for benefits relating to cancer?

To establish eligibility for benefits for cancer, an employee or his or her survivor must show that:

(a) The employee has been diagnosed with one of the forms of cancer specified in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) and set forth in § 30.5(dd) of this subpart; and

(1) Is a member of the Special Exposure Cohort (as described in § 30.213(a) of this subpart) who, as a DOE employee or DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(2) Is a member of the Special Exposure Cohort (as described in § 30.213(a) of this subpart) who, as an atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(b) The employee has been diagnosed with cancer; and

(1) Is/was a DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(2) Is/was a DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(3) Is/was an atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and

(4) That the cancer was at least as likely as not related to the employment at the DOE facility or atomic weapons employer facility; or

(c) The employee has been diagnosed with an illness or disease that arose as a consequence of the accepted cancer.

**§ 30.211 How does a claimant establish that the employee has or had contracted cancer?**

A claimant establishes that the employee has or had contracted cancer with medical evidence that sets forth the diagnosis of cancer and the date on which that diagnosis was made.

**§ 30.212 How does a claimant establish that the cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility?**

HHS, with the advice of the Advisory Board on Radiation and Worker Health, will issue guidelines for making the determination whether cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility. Claimants should consult those guidelines for information regarding the type of evidence that will be considered by DOL, in addition to the employee's radiation dose reconstruction that will be provided by HHS, in making this determination.

**§ 30.213 How does a claimant establish that the employee is a member of the Special Exposure Cohort?**

(a) For purposes of establishing eligibility as a member of the Special Exposure Cohort (SEC) under § 30.210, the employee must have been a DOE employee, DOE contractor employee, or an atomic weapons employee who meets any of the following requirements:

(1) The employee was so employed for a number of workdays aggregating at least 250 workdays before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee; and during such employment:

(i) Was monitored through the use of dosimetry badges for exposure at the plant of the external parts of the employee's body to radiation; or

(ii) Worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(2) The employee was so employed before January 7, 1974, by DOE or a DOE contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(3) The employee is a member of a group or class of employees subsequently designated as additional members of the SEC by HHS.

(b) For purposes of satisfying the 250 workday requirement of paragraph (a)(1) of this section, the claimant may aggregate the days of service at more than one gaseous diffusion plant.

(c) Proof of employment by the DOE or a DOE contractor, or atomic weapons employer for the requisite time periods set forth in paragraph (a) of this section, may be made by the submission of any trustworthy contemporaneous records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(d) Contemporaneous records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

**§ 30.214 How does a claimant establish that the employee has been diagnosed with cancer or has sustained a consequential injury, illness or disease?**

(a) Evidence that the employee contracted a specified cancer (in the case of SEC members) or other cancer